

Appl. No. 09/867,235
Atty. Docket No. 8569
Amdt. dated 10/9/2003
Reply to Advisory Action of 8/26/2003
Customer No. 27752

REMARKS

Amendments

Claims 27-31 have been amended above. Support for these amendments can be found at Canceled claim 5.

Rejection Under 35 USC 102 Over Rouquet et al.(EP 908175)

The Advisory Action has maintained rejection of claims 27-31 under 35 USC §102(b) as being anticipated by Rouquet et al (EP '175). Applicants respectfully traverse this rejection as it would apply to the claims as amended herein.

The Advisory Action states that the claims do not recite providing a significant skin care benefit. Applicants assert that the fact that the claim is written to a "method of enhancing delivery" and that the actives are, as amended, limited to a group having specific mechanisms of activity, clearly "recites" the function of the instant compositions. Therefore, Applicants prior remarks regarding Rouquet stand. There is no contemplation in Rouquet that the silicone elastomers enhance delivery of actives. They are used to maintain the suspension of the spherical particles and to provide a pleasant skin feel.

In response to Applicants' statement that no guidance is provided in Rouquet which would lead one of skill in the art to choose oil-soluble actives, the Advisory Action mentions the use of isoparaffin as a skin care active by Rouquet. While isoparaffin may have emollient properties, neither it, nor other emollients are included in the skin care actives of the claims as amended.

Rouquet provides skin care compositions with high percent by weight of spherical particles. There is no contemplation of the use of these compositions to deliver actives into the skin, nor recognition of the enhancing effect on deposition of oil-soluble actives by silicone elastomers.

As previously pointed out, EP '175 relates to both oil-in-water and water-in-oil compositions comprising elastomeric organopolysiloxanes wherein, according to the translation of the French language document, the use of high levels of spherical particles that does not result in unstable compositions. The stability of such particles, as discussed in Rouquet, is important since these particles are relied upon to absorb oils while not drying on the skin, thereby maintaining cosmetic properties.

Notwithstanding the enhanced cosmetic stability advantages provided by the compositions disclosed by Rouquet, there is no teaching that compositions with the specific components disclosed in the instant specification provide a significant skin care active delivery

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benefit. Additionally, while several broad categories of skin care actives are disclosed for use with the compositions of Rouquet, there is no guidance provided which would lead one of skill in the art to choose oil-soluble actives, especially those now claimed, as opposed to water-soluble actives. The mere use of an oil-soluble active in an example of Rouquet does not change the fact that there is no guidance to choose those actives. In addition, no distinction or advantage is taught in the context of a water-in-oil composition, as opposed to an oil in water composition, as is now a limitation of the pending claims. Applicant is not claiming discovery of water-in-oil compositions, but rather the increased deposition of the specific oil soluble skin care actives when delivered via water-in-oil compositions.

Given the foregoing considerations, it is submitted that Applicants' claims as now amended are not anticipated by EP '175. Accordingly, rejection of these claims over, under 35 USC §102(b) is improper and should be withdrawn.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under USC §102(b). Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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